

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

A. PHILIP RANDOLPH INSTITUTE
OF OHIO, et al.,

CASE NO. 1:20-cv-1908

Plaintiffs,

SEPTEMBER 8, 2020

vs.

FRANK LaROSE, in his official
capacity as Secretary of State
of Ohio,

Defendant.

TRANSCRIPT OF TELECONFERENCE PROCEEDINGS
HELD BEFORE THE HONORABLE DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 APPEARANCES:

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3 For the Plaintiffs:

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10 For the Defendant:

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13 Also Present:

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11:00:49 1 (On the record at 11:06 a.m.)

11:06:12 2 THE COURT: This is a telephone conference in
11:06:15 3 A. Philip Randolph Institute vs. LaRose, Case Number
11:06:23 4 1:20-cv-1908.

11:06:23 5 The plaintiffs filed for a motion for preliminary
11:06:26 6 injunction about just a few minutes before midnight on
11:06:30 7 Friday, so -- and this was long weekend, so this is the
11:06:36 8 first time we were able to get a phone conference.

11:06:41 9 We've got a few housekeeping issues. One of my law
11:06:47 10 clerks picked up that there's some reference in the
11:06:50 11 pleadings to directive 20.06, but I assume it's 2020-16 that
11:07:00 12 the plaintiffs are challenging. They're not challenging
11:07:03 13 20.06. Is that right?

11:07:09 14 MR. GREENBAUM: Your Honor, this is Jon
11:07:11 15 Greenbaum.

11:07:12 16 That is correct. We mistakenly filed the wrong
11:07:15 17 exhibits. I appreciate Mr. Miller pointing that out to me
11:07:19 18 this morning. And we have filed a directive 2020.16 as
11:07:28 19 errata through ECF this morning.

11:07:31 20 THE COURT: Okay. All right. Expecting -- I
11:07:38 21 know we discussed this in the last phone call
11:07:43 22 (indiscernible audio) Monday, August 31. There's a state
11:07:49 23 case in Franklin County, Ohio Democratic Party and Lewis
11:07:58 24 Goldfarb vs. LaRose, and an injunction hearing is set for
11:08:03 25 this Friday, I believe. In that case the plaintiffs are

11:08:09 1 seeking a declaration that the state statute does not
11:08:16 2 prohibit multiple lockboxes. And I think the Secretary's
11:08:20 3 response to that before petitioner's latest filing today --

11:08:28 4 UNIDENTIFIED SPEAKER: Judge, my view --

5 THE COURT: Can I find out what the statute --
6 can I find out what position they're taking?

11:08:53 7 I'd like to know what position the Secretary is taking
11:08:56 8 in that state case. The plaintiffs are seeking a
11:09:01 9 declaration, a ruling and interpretation by the judge that
11:09:07 10 Ohio law does not prohibit multiple lockboxes if a county
11:09:17 11 board of elections wants to have them. So I want to know
11:09:20 12 what position the Secretary's taking on that lawsuit.

11:09:30 13 MR. MILLER: Your Honor, this is Charles
11:09:32 14 Miller.

11:09:32 15 You're correct about the timing of that. That's
11:09:34 16 scheduled for a preliminary injunction hearing this Friday.
11:09:37 17 At this point in time, there's been a subpoena served upon
11:09:39 18 the Secretary of State for his personal testimony. Our
11:09:42 19 response to that is being filed I believe as we speak.

11:09:46 20 My understanding the position we're taking with
11:09:49 21 respect to that is that within this directive the Secretary
11:09:53 22 of State made the determination that that statute is not
11:09:59 23 ambiguous and that it requires the return to the director at
11:10:05 24 his office at the board of elections.

11:10:10 25 THE COURT: All right. So if -- I take it,

11:10:20 1 Mr. Miller, if the state judge decides on -- rules on this
11:10:28 2 Friday that the statute either is ambiguous or it permits
11:10:36 3 multiple lockboxes, that the Secretary would follow that
11:10:42 4 court order? Or would he appeal? I mean, I --

11:10:48 5 MR. MILLER: Yeah, Your Honor, I cannot rule
11:10:51 6 out an appeal of that depending upon exactly how it comes
11:10:54 7 down. You know, I -- there may not be an appeal but there
11:10:57 8 may be.

11:10:58 9 THE COURT: All right. But he'd either --
11:11:02 10 he'd have to follow the court order or appeal it, all right?
11:11:06 11 I mean, he wouldn't ignore it. He'd either follow it or
11:11:08 12 he'd appeal. Fair enough.

11:11:10 13 MR. GREENBAUM: Correct.

11:11:11 14 THE COURT: All right. I take it it's the
11:11:22 15 position of the petitioners here that if the state statute
11:11:28 16 prohibits more than one lockbox, then that statute's
11:11:32 17 unconstitutional. Is that correct?

11:11:39 18 MR. GREENBAUM: Your Honor, Jon Greenbaum.

11:11:41 19 Yes, we would say that's unconstitutional.

11:11:43 20 THE COURT: If that's what it means?

11:11:47 21 MR. GREENBAUM: If that's what it means, yes.

11:11:48 22 THE COURT: Well, so if -- that must be part
11:12:02 23 of this case. I mean, if the petitioners in that case, the
11:12:09 24 Ohio Democratic Party and Mr. Goldfarb, prevail and the
11:12:13 25 state judge says, well, the statute permits multiple

11:12:16 1 lockboxes, then will it be necessary for me to rule on the
11:12:27 2 constitutionality of the statute?

11:12:31 3 MR. GREENBAUM: Perhaps, depending on what
11:12:35 4 ends up sort of happening after that on the --

11:12:40 5 THE COURT: Well, we'll see. If the Secretary
11:12:45 6 concedes that and doesn't appeal, well, that will decide
11:12:48 7 that. And presumably that may moot the case because I --
11:12:55 8 you know, if the Court rules that multiple lockboxes are
11:12:58 9 permitted, then there's no reason for the Secretary to have
11:13:01 10 that portion of directive 2020.16.

11:13:11 11 But I guess we'll have to see what the judge does.
11:13:17 12 And if the judge -- if the judge rules that the current
11:13:24 13 state statute, which I guess is 3509.05, permits only one
11:13:43 14 lockbox, then potentially petitioners are going to have to
11:13:51 15 immediately amend their motion and have it be a frontal
11:13:55 16 challenge to the constitutionality of the statute. Because
11:13:57 17 the directive -- it can't be unconstitutional for the
11:14:01 18 Secretary to follow Ohio law unless the law is struck down.

11:14:07 19 So essentially your challenge then would be to the
11:14:11 20 statute, not the directive. Right?

11:14:14 21 MR. GREENBAUM: Well, I guess it would -- I
11:14:19 22 guess it would be to both, because the directive's
11:14:31 23 following -- the directive's still the particular
11:14:38 24 implementation of the --

11:14:41 25 THE COURT: Well, I understand that. I

11:14:42 1 understand that. But it can't be unconstitutional for the
11:14:49 2 Ohio Secretary of State to follow a valid state law.

11:14:54 3 MR. GREENBAUM: Well, it can't be
11:14:55 4 unconstitutional under state law, but it can be
11:15:00 5 unconstitutional under Federal law.

11:15:03 6 THE COURT: Only if the state statute is
11:15:05 7 unconstitutional at least as applied to the current
11:15:09 8 circumstances.

11:15:11 9 MR. GREENBAUM: Either -- I mean, either way.
11:15:14 10 I understand your point, that what you're saying is our
11:15:20 11 problem is with the statute as opposed to the directive.

11:15:26 12 THE COURT: If the statute prohibits the
11:15:34 13 relief that you want, which is multiple lockboxes -- and
11:15:38 14 multiple, what I'm really meaning is multiple -- lockboxes
11:15:42 15 at multiple sites.

11:15:44 16 MR. GREENBAUM: Mm-hmm.

11:15:45 17 THE COURT: Because having -- yes, I guess in
11:15:49 18 the past the Cuyahoga County Board of Elections has had two
11:15:53 19 lockboxes on its site at the Board of Elections, but that
11:15:57 20 really doesn't address any of your concerns. You're seeking
11:16:04 21 the permission for any of the 88 county boards, board of
11:16:10 22 elections, in Ohio, if it wishes, to have lockboxes at
11:16:13 23 multiple sites. Correct?

11:16:16 24 MR. GREENBAUM: Correct.

11:16:20 25 THE COURT: All right. Well, if the state

11:16:22 1 statute prohibits this, the only way you can get that relief
11:16:27 2 is if I say that the state statute is not constitutional, at
11:16:32 3 least as applied to the November 4 election.

11:16:37 4 So I think that -- there's no way a Federal judge
11:16:40 5 could prohibit -- could enjoin the Secretary of State from
11:16:46 6 following a valid state law. He has no power to do that
11:16:53 7 unless -- because that's what a state -- that's what a state
11:16:58 8 official is required to do, follow state law.

11:17:01 9 MR. GREENBAUM: Unless -- well, actually, you
11:17:03 10 do have authority to do that if that -- if in following
11:17:09 11 state law what's happening is that state law violates the
11:17:17 12 Constitution.

11:17:18 13 THE COURT: Right, as applied to this
11:17:22 14 election, coming up November 4.

11:17:23 15 MR. GREENBAUM: Correct.

11:17:24 16 THE COURT: That provision, at least that
11:17:25 17 provision of the law -- I don't strike down the whole law --
11:17:29 18 that provision that prohibits multiple lockboxes at multiple
11:17:36 19 sites in a county is unconstitutional. So that's my point.

11:17:47 20 So either -- it looks like either as of -- depending
11:17:57 21 on what the judge does -- the state judge does this Friday --
11:18:01 22 that that will -- may change the contours of this lawsuit.
11:18:05 23 So we'll have to deal with that as we go.

11:18:07 24 But everyone understands that if the state judge says
11:18:14 25 that this law prohibits -- that this law prohibits the

11:18:22 1 relief that the plaintiffs are seeking, then they're going
11:18:24 2 to have to convince me that that law is unconstitutional as
11:18:28 3 applied to this election, upcoming election.

11:18:35 4 All right. I've got to set a -- all right. There's
11:18:41 5 something else I want to pin down. The plaintiffs are not
11:18:52 6 seeking an order requiring any county board to have more
11:19:02 7 than one lockbox. Is that right?

11:19:04 8 MR. GREENBAUM: That's correct in terms of
11:19:08 9 what we asked for in the motion, that the motion --

11:19:12 10 THE COURT: All right. I want to make sure if
11:19:13 11 we've spent all this time litigating this that if I grant
11:19:20 12 the relief you are seeking, that you're not going to turn
11:19:23 13 around and (indiscernible audio) having looked at the
11:19:30 14 circumstances in that particular county and decide that
11:19:34 15 they're not going to have more than one lockbox, that you
11:19:37 16 don't turn around and sue them.

11:19:39 17 MR. GREENBAUM: I think that -- well, I mean,
11:19:41 18 that would be a different case.

11:19:45 19 THE COURT: Well, I don't want to start
11:19:49 20 spawning a whole lot of cases against individual boards.

11:19:51 21 MR. GREENBAUM: Okay.

11:19:52 22 THE COURT: There's not going to be time for
11:19:55 23 it, and if that's what's going to happen, I -- all right?

11:19:59 24 MR. GREENBAUM: All right. I -- let me
11:20:02 25 convene with our clients about that and --

11:20:07 1 THE COURT: And also hypothetically, pick
11:20:13 2 Cuyahoga County because that's the one I live in, suppose
11:20:16 3 the Cuyahoga County Board, if I grant you relief, says,
11:20:21 4 okay, we're going to have two off-site lockboxes. We're
11:20:24 5 going to have the one we have at the Board and we're going
11:20:27 6 to have one on the east side of the county and one on the
11:20:30 7 west side of the county, that you're not going to turn
11:20:33 8 around and sue the board in saying two off-site ones isn't
11:20:38 9 enough, you have to have five.

11:20:43 10 MR. MILLER: Your Honor, this is Charles
11:20:44 11 Miller on behalf of the Secretary of State.

11:20:48 12 I think that even if plaintiffs' counsel can get to
11:20:52 13 the point to where he can make that representation on behalf
11:20:55 14 of his clients, and I don't know if he could, he certainly
11:20:57 15 could not make that representation on behalf of others.

11:20:59 16 THE COURT: Well, I understand that. I
11:21:01 17 understand that. But these are the lawsuits we have, all
11:21:04 18 right, and these are the -- so I just want to pin down these
11:21:13 19 particular plaintiffs. I agree, Charles, no one can bind
11:21:17 20 anyone else. Someone else can file any lawsuit they want.

11:21:24 21 MR. GREENBAUM: Your Honor, I will -- I need
11:21:27 22 to confer with my clients first.

11:21:30 23 THE COURT: All right.

11:21:30 24 MR. GREENBAUM: But I will -- we'll get you an
11:21:35 25 answer to that.

11:21:36 1 THE COURT: Because you understand your
11:21:38 2 argument -- your argument doesn't say that there's some --
11:21:45 3 there's nothing in your motion, you're not seeking an order
11:21:48 4 saying that it's constitutionally required in any given
11:21:53 5 county to have more than one or how many. So I'm not -- I'm
11:22:00 6 not going to be engaged in any fact finding, and there
11:22:03 7 aren't going to be any witnesses that are going to be
11:22:05 8 presenting any testimony on that.

11:22:12 9 MR. GREENBAUM: Your Honor, like I said, I
11:22:15 10 heard your point that whatever relief we're going to seek
11:22:19 11 with respect to this needs to be all wrapped up into one.
11:22:25 12 And as you directed, we have many of our clients on this
11:22:28 13 call.

11:22:29 14 THE COURT: All right. Well, I want you to
11:22:30 15 caucus and get back to us quickly with some filing, because,
11:22:35 16 candidly, there isn't going to be any time for a whole lot
11:22:38 17 of what I'll call spinoff litigation from this one, even if
11:22:41 18 you prevail. If you don't prevail, you obviously have an
11:22:44 19 appeal. If you do prevail, you know, it will be by the end
11:22:51 20 of September, all right? People are going to start voting
11:22:54 21 the first week of October.

11:22:55 22 MR. GREENBAUM: Understood.

11:22:55 23 THE COURT: So there's not going to be time
11:22:57 24 for a whole lot of satellite litigation anyway, but I don't
11:23:01 25 want to be spawning it or even engaging in this if that's

11:23:04 1 what we're going to have. Because it's important that
11:23:10 2 people have certainty.

11:23:12 3 You know, you've got 88 different boards. They're
11:23:15 4 going to have to decide and make a decision. And you can't
11:23:20 5 have uncertainty with elections. Everyone needs to know
11:23:23 6 what they're going to be able to do and what the procedures
11:23:26 7 are and then they do it. So I want you to caucus and make a
11:23:35 8 filing quickly on that.

11:23:36 9 MR. GREENBAUM: Understood, Your Honor.

11:23:38 10 THE COURT: All right.

11:23:40 11 MR. SCHUSTER: Judge, this is Jim Schuster.
11:23:43 12 Pursuant to the motion for a preliminary injunction with a
11:23:47 13 memo, it was meant to convey that the decree is
11:23:52 14 unconstitutional whether it be way of a statute which is
11:23:58 15 interpreted to allow or to require the directive or not. So
11:24:08 16 it's still a challenge on the decree and challenging the
11:24:13 17 decree whether or not state law requires or does not require
11:24:19 18 or is ambiguous, so --

11:24:22 19 THE COURT: Well, I can easily dismiss that,
11:24:25 20 all right? I'm not even going to --

11:24:29 21 MR. SCHUSTER: Okay.

11:24:30 22 THE COURT: If the state law doesn't
11:24:32 23 require -- if the state law -- I mean, LaRose has already
11:24:37 24 said publicly if the state law doesn't require it, doesn't
11:24:41 25 mandate a limit, he wouldn't order it. Is that --

11:24:46 1 Mr. Miller, that's correct, your -- I mean --

11:24:49 2 MR. MILLER: Yes, Your Honor.

11:24:50 3 THE COURT: All right. So if the state
11:24:52 4 statute -- Secretary of State LaRose isn't going to order
11:25:01 5 people to follow a procedure that the state law doesn't
11:25:03 6 mandate. If the state law permits a board to have multiple
11:25:07 7 lockboxes, Secretary of State LaRose isn't going to enjoin
11:25:13 8 them that they can only have one, right?

11:25:15 9 MR. SCHUSTER: What I was saying is to the
11:25:16 10 extent the statute is interpreted to only allow for one drop
11:25:22 11 box location, the directives being issued, there's still the
11:25:30 12 issue of the constitutionality of the directive, whether or
11:25:34 13 not it be by virtue of the statute or not.

11:25:39 14 THE COURT: Well, I'm not even going to get
11:25:40 15 there because am I correct that Secretary LaRose will follow
11:25:46 16 any Federal or state interpretation of that law? And if the
11:25:54 17 law gives boards the discretion to have more than one
11:25:58 18 lockbox, he'll let them do it. Right?

11:26:02 19 MR. SCHUSTER: Yes, but if the --

11:26:04 20 THE COURT: I'm asking the Secretary of State
11:26:07 21 that. I'm asking the Secretary of State that.

11:26:09 22 Right?

11:26:11 23 MR. MILLER: Your Honor, this is Charles
11:26:12 24 Miller.

11:26:13 25 And, yeah, my understanding is once there's a final

11:26:15 1 determination of the law that there should be multiple, you
11:26:17 2 know, he will, as you indicate, I believe happily order
11:26:23 3 multiple.

11:26:24 4 THE COURT: I'm sorry, would what? I
11:26:26 5 didn't --

11:26:26 6 MR. MILLER: I'm sorry. I said, yeah, I think
11:26:28 7 that once that final determination is made, as you
11:26:32 8 indicated, I think he would be happy to order multiple based
11:26:35 9 upon all of his public statements.

11:26:38 10 THE COURT: All right.

11:26:44 11 MR. GREENBAUM: That he -- I have a question,
11:26:45 12 Your Honor, for Mr. Miller, just to get clarification, if
11:26:53 13 you don't mind. This is Jon Greenbaum.

11:26:58 14 THE COURT: Sure.

11:26:58 15 MR. GREENBAUM: I'm curious as to what the
11:27:04 16 Secretary of State would do in that instance. And you may
11:27:07 17 not be able to answer that question. Would the Secretary of
11:27:13 18 State merely say that counties can have more than one
11:27:20 19 lockbox if they so choose or would the Secretary of State
11:27:25 20 adopt any standard with respect to multiple lockboxes -- or
11:27:29 21 drop boxes?

11:27:31 22 MR. MILLER: Yeah, I can't answer that because
11:27:33 23 I think that that is subject to a lot of internal discussion
11:27:37 24 about whether -- you know, if this litigation goes in the
11:27:40 25 way or the other one goes in the way that says that there

11:27:45 1 should be multiple lockboxes, whether the Secretary of State
11:27:48 2 will promulgate standards to try to have some uniformity
11:27:52 3 with respect to that because that uniformity issue, you
11:27:56 4 know, comes up and percolates a lot in the Federal election
11:27:59 5 litigation, you know.

11:28:00 6 So I think that there is at least some contemplation
11:28:03 7 going on to whether that should occur, and so I can't say
11:28:06 8 whether that would or would not.

11:28:10 9 THE COURT: That would be the type of lockbox
11:28:11 10 and who opens them and things like that?

11:28:14 11 MR. MILLER: Your Honor, it could also go to
11:28:17 12 distribution. You know, a lot of the challenges that are
11:28:23 13 being raised and in the some of the affidavits here are on
11:28:26 14 the amount of travel and how many people are served by each
11:28:30 15 lockbox, things of that nature, could potentially be subject
11:28:34 16 to a directive so that the counties would know, hey, we have
11:28:39 17 this many people and so we need this number of lockboxes,
11:28:46 18 something along those lines, potentially.

11:28:50 19 MR. GREENBAUM: And Your Honor, Counsel for
11:28:53 20 the Secretary is right, I mean, that is a large part of our
11:28:55 21 challenge, is with respect to the uniformity issue.

11:29:03 22 So, for example, if the Secretary -- if in the state
11:29:07 23 litigation the Court ruled in the plaintiffs' favor and then
11:29:12 24 the Secretary of State came out with a directive that was
11:29:16 25 designed to create some uniformity with respect to the

11:29:24 1 number of lockboxes being tied in some way to the amount of
11:29:29 2 voters, that's the sort of solution that we would be looking
11:29:39 3 for as plaintiffs in this case.

11:29:43 4 THE COURT: That's what you want. You want
11:29:45 5 something like that.

11:29:45 6 MR. GREENBAUM: Exactly.

11:29:47 7 THE COURT: All right. Well, so ultimately,
11:30:03 8 another way -- I mean --

11:30:13 9 MR. MILLER: Your Honor, this is Charles
11:30:14 10 Miller.

11:30:15 11 Just while you're thinking about that, and I would
11:30:17 12 anticipate that those would be the type of discussions that
11:30:18 13 we would be having based upon the results of that state
11:30:21 14 court litigation. Because, you know, once you get to the
11:30:28 15 point to where if there is an order for multiple, you know,
11:30:32 16 I think there's going to be a lot of work that goes into
11:30:35 17 finalizing, you know, those uniformity provisions most
11:30:39 18 likely, if it can be done in a timely way. And, you know,
11:30:43 19 so I believe that that type of work is going on right now.

11:30:55 20 THE COURT: I'm just trying to figure out
11:30:58 21 exactly what we're litigating here and is it the same thing
11:31:01 22 that's being litigated in Franklin County, which doesn't
11:31:05 23 make a lot of sense.

11:31:10 24 MR. MILLER: Your Honor, this is Charles
11:31:12 25 Miller --

11:31:13 1 THE COURT: Or is it different?

11:31:13 2 MR. MILLER: Your Honor, this is Charles
11:31:14 3 Miller.

11:31:15 4 Frankly, I mean, there's so much overlap between the
11:31:19 5 two cases, they are extremely similar. You know, on a
11:31:27 6 legal, technical basis, there were not equal protection
11:31:32 7 claims that were actually asserted in the state case, and
11:31:35 8 that's probably, you know, to remove the potential for
11:31:38 9 removal or something like that. But, you know, we're really
11:31:44 10 talking about the same issues.

11:31:49 11 MR. GREENBAUM: Your Honor, this is Jon
11:31:50 12 Greenbaum.

11:31:52 13 MR. MILLER: Your Honor, I'm sorry, this is
11:31:53 14 Charles Miller. I just need to correct something. You
11:31:55 15 know, we're trying to -- messages is going on.

11:32:01 16 At this point in time, there is not work going on for
11:32:04 17 uniform standards for drop boxes, so that was a presumption
11:32:07 18 I was making that is actually incorrect. So that work is
11:32:11 19 not happening right now.

11:32:12 20 MR. GREENBAUM: Your Honor, this is Jon
11:32:13 21 Greenbaum.

11:32:13 22 Yes, both cases deal with the issue of the drop boxes
11:32:20 23 and the issue of whether there's a limitation on one drop
11:32:28 24 box site per county. But of course we are in the two cases
11:32:35 25 challenging that on different grounds, state law grounds

11:32:43 1 versus constitutional grounds. And that in the Federal case
11:32:49 2 sort of even if -- even if under state law it's the case
11:32:56 3 that state law requires one drop box -- only drop boxes at
11:33:04 4 one location in the county, that that could still violate
11:33:11 5 the Federal Constitution. So there's --

11:33:14 6 THE COURT: Well, let me ask you this, all
11:33:16 7 right?

11:33:19 8 The Secretary has said that he's going to follow the
11:33:26 9 state law. If the state law mandates one lockbox per
11:33:32 10 county, he's going to follow it unless of course the law has
11:33:37 11 been struck down. And if it's struck down, then he doesn't
11:33:39 12 have to follow that and he won't. So that's pretty clear.

11:33:44 13 So hypothetically, suppose the state judge says the
11:33:54 14 law is clear and it says only one lockbox per county, all
11:34:01 15 right, do I have to follow that ruling? Suppose I say the
11:34:09 16 statute doesn't limit any individual board to one lockbox
11:34:13 17 per county.

11:34:17 18 MR. GREENBAUM: Your Honor, Jon Greenbaum.

11:34:18 19 Yes, I think you would have to -- you would have to
11:34:23 20 defer to the state court.

11:34:27 21 THE COURT: Well, I have to defer to the Ohio
11:34:29 22 Supreme Court.

11:34:30 23 MR. GREENBAUM: Right.

11:34:30 24 THE COURT: But do I have to defer to an Ohio
11:34:33 25 trial court?

11:34:34 1 MR. MILLER: Your Honor, this is Charles
11:34:35 2 Miller.

11:34:35 3 Actually, what you just said was going to be my
11:34:37 4 response, which is as a technical legal matter, the Federal
11:34:44 5 District Court is only required to defer to the State
11:34:48 6 Supreme Court, which is why you have the ability to certify
11:34:51 7 questions of state law to the Supreme Court. You know,
11:34:53 8 however, I think the abstention doctrine would come in to
11:34:59 9 apply, specifically Pullman at this point in time, to where,
11:35:01 10 you know, if there -- because that issue is out there and
11:35:05 11 being litigated, typically the Federal Courts would abstain
11:35:10 12 so that there isn't that conflict of interpretation
11:35:15 13 occurring. You would not be technically required to do so.
11:35:23 14 You know, comity principles may come into play, you know, or
11:35:27 15 a certification of the Supreme Court to speed along the
11:35:29 16 state process. But honestly, the Ohio Supreme Court is
11:35:32 17 pretty effective at turning out election cases pretty
11:35:35 18 quickly once it got to them.

11:35:37 19 UNIDENTIFIED SPEAKER: I'm having a hard time
11:35:38 20 hearing this.

11:35:39 21 MR. MILLER: I apologize. Do you need me to
11:35:41 22 resay that?

11:35:45 23 UNIDENTIFIED SPEAKER: No. I just missed a
11:35:46 24 little bit of it, but it was starting to crackle a little
11:35:49 25 bit.

11:35:50 1 MR. MILLER: Okay. (Indiscernible audio) I
11:35:54 2 think probably (indiscernible audio).

11:36:03 3 THE COURT: Well, it seems to me what's likely
11:36:08 4 to happen, if the state judge, Franklin County, rules that
11:36:15 5 the statute does not limit any board to one drop box and the
11:36:26 6 Secretary doesn't appeal, this case becomes moot because
11:36:29 7 you'll get the relief you want. If the judge decides that
11:36:40 8 the statute doesn't mandate one lockbox per county and the
11:36:45 9 Secretary appeals that, then this case stays alive and
11:36:52 10 I'm -- what I will have to consider is the constitutionality
11:36:57 11 of the statute as construed by that judge if I want to
11:37:04 12 follow it or defer to it or, alternatively, construe it
11:37:10 13 myself. And if the -- so we'll have to deal with that as we
11:37:22 14 go.

11:37:22 15 So I'm going to have to -- the one thing we need is
11:37:28 16 some certainty and predictability and give -- everyone know
11:37:35 17 how they're going to vote, so -- and I have to find a day
11:37:40 18 when I'm clear for a hearing this month.

11:37:43 19 And the best day for me is Wednesday, September 23.
11:37:48 20 So I'm going to set a hearing for that day, and we'll figure
11:37:55 21 out who's going to -- what witnesses we'll need in a little
11:37:58 22 bit.

11:38:00 23 So it seems to me with that, I'm going to require the
11:38:06 24 State's response by noon on Wednesday September 16, and
11:38:13 25 that's several days after the Franklin County judge is going

11:38:16 1 to rule. Presumably, he or she is going to rule from the
11:38:24 2 bench on Friday. Although, if he takes it under advisement,
11:38:28 3 you know, he might, but I would anticipate a ruling soon.

11:38:32 4 And then the petitioner's reply, noon on Monday,
11:38:36 5 September 21.

11:38:40 6 And I'm thinking we should start the hearing 9, 9:30.
11:38:44 7 We've got to figure out how long it's going to take and what
11:38:48 8 witnesses we're going to have.

11:38:54 9 We have a number of declarations. Obviously we can --
11:39:03 10 I don't know, you know, people are free to take depositions
11:39:06 11 between now and the hearing, depose any of those people.
11:39:13 12 I'm not sure if there -- exactly what facts are in dispute.
11:39:23 13 I think that plaintiffs need to establish that there are
11:39:26 14 boards of elections which would have multiple off-site
11:39:35 15 lockboxes if they were permitted to do it. Otherwise,
11:39:37 16 there's -- this is an advisory opinion or a theoretical
11:39:45 17 where there's no reason to decide. So I think we need -- we
11:39:50 18 don't need 88, but --

11:39:53 19 How many boards would you have testify, Mr. --
11:40:02 20 Jonathan, how many would you propose?

11:40:05 21 MR. GREENBAUM: Probably a small handful, Your
11:40:07 22 Honor, focused in some of the largest counties.

11:40:11 23 THE COURT: That's what I would suggest. Of
11:40:18 24 course, we're going to do this by Zoom, so no one has to
11:40:21 25 travel. And the public won't be able to watch, but they'll

11:40:26 1 be able to listen to the entire hearing because of course
11:40:31 2 it's a public hearing. But that's just the reality of the
11:40:34 3 technology.

11:40:43 4 The concern about the mail, I don't know how we
11:40:48 5 litigate that. There is a concern, all right? I mean, and
11:40:53 6 it's been created by a number of people. There's no way to
11:41:00 7 prove what might happen on November -- you know, if a whole
11:41:05 8 lot of people vote by mail.

11:41:10 9 I mean, the way it works in Ohio, for your ballot to
11:41:14 10 be counted it must be postmarked by midnight the day before,
11:41:19 11 Monday, November 3. Correct? Vote by mail, you'd have to
11:41:23 12 have a postmark of November 3?

11:41:26 13 MR. MILLER: This is Charles Miller.

11:41:27 14 Yes, that is correct.

11:41:28 15 THE COURT: And then, Charles --

11:41:30 16 MR. MILLER: Your Honor, I'm sorry, it would
11:41:32 17 be the 2nd because that's the Monday.

11:41:34 18 THE COURT: Right, sorry. Tuesday is the 3rd.
11:41:37 19 It needs to be postmarked before midnight on November 2,
11:41:40 20 Monday the 2nd. And then it has to be received by the
11:41:49 21 board, respective board of your county, no later than
11:41:51 22 Friday, November 13, if I did the counting right and looked
11:41:56 23 at the statute.

11:41:57 24 Is that right?

11:41:58 25 MR. MILLER: Your Honor, Charles Miller.

11:41:59 1 That is correct, 10 days following the election day.

11:42:02 2 THE COURT: Right. So that means the post
11:42:06 3 office has from Monday the 2nd to the following Friday the
11:42:10 4 13th to get the ballots delivered.

11:42:21 5 MR. GREENBAUM: Your Honor, this is Jon
11:42:24 6 Greenbaum.

11:42:25 7 The primary issues that we have in terms of the mail
11:42:29 8 aren't so much that -- the person putting it in the mail on
11:42:34 9 November 2 and whether that would be received by the 13th,
11:42:40 10 but the fact that there are multiple steps in this process
11:42:43 11 in terms of a voter has to request an absentee ballot, a --

11:42:50 12 THE COURT: No, they don't, they don't. The
11:42:51 13 Secretary took care of that. Everyone, every registered
11:42:54 14 voter got an absentee ballot application in the mail last
11:43:01 15 week.

11:43:01 16 MR. GREENBAUM: Sure, but the voter has to
11:43:04 17 request it. In other words, the voter has to send in that
11:43:08 18 form, and then the ballot has to be sent out to the voter
11:43:13 19 and the voter has to return the ballot. That's my only
11:43:17 20 point.

11:43:17 21 THE COURT: Understood, understood. But
11:43:18 22 everyone has plenty of time for that if they don't delay. I
11:43:22 23 mean, obviously if you wait till the week before the
11:43:24 24 election to request your ballot, you know --

11:43:30 25 MR. SCHUSTER: And, Judge -- this is Jim

11:43:33 1 Schuster -- I believe there are some concerns with regard to
11:43:36 2 the amount of time it will take the post office to actually
11:43:42 3 get the ballot in to the board of elections (indiscernible
11:43:49 4 audio) November 2nd, you know, based on a declaration that
11:43:53 5 was offered with regard to the logistics and with regard to
11:43:58 6 the changes and actions that have been made by the USPS to
11:44:01 7 effectively delay the mail.

11:44:04 8 THE COURT: There's concerns, but the point is
11:44:05 9 I don't -- you know, no one can prove any of this. This is
11:44:11 10 a matter of speculation at this point. There's a lot of
11:44:16 11 anxiety, and I think the Court can take judicial notice that
11:44:21 12 there's a lot of anxiety over the ability of the postal
11:44:24 13 service to handle a large volume of mail.

11:44:28 14 MR. SCHUSTER: And, Judge, this is Jim
11:44:30 15 Schuster again.

11:44:31 16 Just on that declaration, it does walk through the
11:44:33 17 steps on the amount of time it would take from one step to
11:44:37 18 the next step to the following step. And, you know,
11:44:42 19 granted, there is some, you know, working room with regard
11:44:49 20 to the estimates, but there is an estimate between 11 and 17
11:44:52 21 days given the significant rush that would be right at the
11:44:56 22 heels of the election.

11:45:02 23 THE COURT: Are you saying an estimate of 11
11:45:04 24 to 17 days to deliver ballots that are put in the -- that
11:45:13 25 are mailed?

11:45:13 1 MR. SCHUSTER: Yes, it could be by that much,
11:45:15 2 yes.

11:45:20 3 THE COURT: Well, I guess we'll need some
11:45:22 4 testimony -- someone's going to testify to that. I guess
11:45:25 5 you ought to have at least one witness who's going to
11:45:28 6 (indiscernible audio) on that.

11:45:31 7 MR. SCHUSTER: Yes.

11:45:42 8 THE COURT: All right. So we'll have one
11:45:43 9 witness on potential postal delays.

11:45:48 10 MR. MILLER: This is Charles Miller.

11:45:50 11 Just to clarify, is that an active USPS supervisor or
11:45:55 12 something you're having testify?

11:45:58 13 MR. SCHUSTER: This is an individual who is
11:46:01 14 with the National Association of Letter Carriers who was a
11:46:07 15 letter carrier for approximately 40 years and is intimately
11:46:11 16 familiar with the processes of the USPS.

11:46:16 17 THE COURT: I think he's the person who
11:46:18 18 submitted a declaration. Right?

11:46:20 19 MR. SCHUSTER: Yes, Judge, that's correct.
11:46:22 20 This is Jim Schuster again.

11:46:24 21 It would be Exhibit A to the memorandum in support of
11:46:30 22 preliminary injunction.

11:46:33 23 THE COURT: All right. So if we have that --
11:46:38 24 what's that person's name again?

11:46:41 25 MR. SCHUSTER: Yes, his name is David Ditchey,

11:46:44 1 D as in --

11:46:46 2 THE COURT: I got it. David Ditchey.

11:46:49 3 MR. SCHUSTER: Okay.

11:46:50 4 THE COURT: All right. You've got David
11:46:51 5 Ditchey. You've got maybe three or four of largest county
11:47:02 6 boards.

11:47:02 7 So who else would the plaintiffs be calling?

11:47:04 8 MR. GREENBAUM: Your Honor, we probably would
11:47:06 9 call at least our expert who estimated the delays caused by
11:47:16 10 only having the one drop box location.

11:47:22 11 THE COURT: Who would that -- who is that?

11:47:25 12 MR. GREENBAUM: That's Daniel Chatman.

11:47:28 13 THE COURT: All right. He's got a
11:47:32 14 declaration. All right, we'll have Mr. Chatman. Okay.

11:47:34 15 MR. GREENBAUM: And, you know, we would have
11:47:36 16 to think about some others. You know, obviously we want to
11:47:42 17 provide a tight presentation. We also want to provide a
11:47:46 18 complete one.

11:47:48 19 THE COURT: Okay.

11:47:48 20 MR. GREENBAUM: And I don't know to what
11:47:52 21 degree, you know, in terms of witnesses that we've submitted
11:47:56 22 declarations for, whether you'll accept those declarations
11:47:58 23 or how far we need to go beyond them.

11:48:01 24 THE COURT: I'll accept that the county can --
11:48:04 25 you know, the State can in its declaration.

11:48:06 1 So, Mr. Miller, in terms of witnesses, I'm just trying
11:48:10 2 to schedule this. Would you envision calling witnesses?

11:48:16 3 MR. MILLER: Your Honor, we're still kind of
11:48:18 4 processing everything that they have here and trying to
11:48:21 5 determine if we need, you know, some sort of
11:48:28 6 counterdeclarance with respect to particularly Chatman
11:48:31 7 there, and -- I'm sorry, I forget his name, the retired
11:48:36 8 postal worker. I guess it's Ditchey.

11:48:42 9 Outside of that, I can't think of anybody right now,
11:48:46 10 but we would certainly update everyone if that changes.

11:48:49 11 THE COURT: All right. Well, you should do
11:48:53 12 that because the plaintiffs might want to depose him or her,
11:48:55 13 and obviously you can depose any of these folks between now
11:48:58 14 and the hearing.

11:49:06 15 MR. MILLER: Yes. So right now, Your Honor, I
11:49:09 16 think that we would probably be anticipating two to three.

11:49:13 17 THE COURT: All right. Can you give us an
11:49:15 18 idea of who they might be or what they'd be testifying
11:49:18 19 about?

11:49:20 20 MR. MILLER: As I just indicated, Your Honor,
11:49:24 21 I think that the two would be in response to those two
11:49:28 22 experts, Mr. Ditchey and Mr. Chatman, so that would be kind
11:49:31 23 of the postal service situation potentially and the, you
11:49:37 24 know, 53 hours of wait time at the board of elections to
11:49:41 25 drop off a ballot as Mr. Chatman said.

11:49:45 1 THE COURT: Okay, fair enough.

11:49:47 2 All right. Well, fortunately, I don't have
11:49:58 3 anything -- I don't have anything scheduled other than this
11:50:00 4 for that day, so I think I'm suggesting -- why don't we
11:50:05 5 start at 9:30 on the 23rd, and we'll just go as long as we
11:50:18 6 need to go. We'll obviously take a lunch break if we get to
11:50:22 7 noon and we aren't done.

11:50:29 8 MR. MILLER: Your Honor, this is Charles
11:50:30 9 Miller.

11:50:32 10 You know, because this is kind of a Zoom thing and --
11:50:36 11 I just want to understand, do you anticipate there kind of
11:50:38 12 being opening arguments and things of that nature or do you
11:50:42 13 want --

11:50:42 14 THE COURT: Well, we can talk about that. You
11:50:50 15 know, we can have very brief opening statements, Charles.
11:50:52 16 You know, I think I understand from the pleadings where
11:50:55 17 we're going. At least I certainly know the petitioners',
11:51:00 18 and then I'll see your response. But I don't know exactly
11:51:05 19 what the State's position is going to be other than -- I
11:51:08 20 know you're going to take the position that you're following
11:51:12 21 the law, okay, and that's what you should do, okay? So your
11:51:19 22 position will be -- but, again, I don't know what your
11:51:22 23 position's going to be if --

11:51:26 24 MR. MILLER: Your Honor, our position will be
11:51:29 25 that, you know, one drop box location per county is

11:51:33 1 constitutional and does not violate equal protection.

11:51:36 2 THE COURT: All right. That's your -- you
11:51:39 3 think under the circumstances -- under these circumstances
11:51:43 4 as we have in November, given the pandemic and whatever
11:51:46 5 anxiety there is about the postal service, the one drop box
11:51:51 6 at the board is sufficient, right?

11:51:54 7 MR. MILLER: Yes, Your Honor.

11:51:55 8 THE COURT: Okay. All right, fine. Then --

11:52:01 9 MR. MILLER: And of course, yes, as a matter
11:52:03 10 of constitutional law, yes.

11:52:07 11 THE COURT: Right. All right. Well, then
11:52:10 12 that's what we'll litigate. And of course, it may all be
11:52:15 13 moot if you're given the permission to give board -- if the
11:52:18 14 statute gives the permission to have the boards have
11:52:21 15 multiple ones, this is going to be moot. But if it doesn't,
11:52:29 16 then we've got to litigate -- we've got to litigate
11:52:33 17 essentially the law, and you'll be defending the law on this
11:52:36 18 basis. All right.

11:52:40 19 So, again, we'll start at 9:30. If we're done at
11:52:45 20 noon, we're done at noon. If not, we'll take a lunch break
11:52:48 21 and then pick it up. Probably break for about at least 45
11:52:52 22 minutes and then resume.

11:53:00 23 And my intent is to make a ruling that day based on
11:53:05 24 what I've read before and what I hear, because, you know,
11:53:10 25 we're all going to be at the end of September and people

11:53:14 1 will be starting to vote.

11:53:18 2 Well, when exactly do they start voting? Three days
11:53:22 3 before the election? I know the first week of October.

11:53:25 4 MR. MILLER: This is Charles Miller.

11:53:27 5 Your Honor, it would begin four weeks before, so it
11:53:29 6 would be October 6.

11:53:31 7 THE COURT: Okay. October 6.

11:53:34 8 MR. MILLER: Yes, Your Honor. So that will be
11:53:36 9 about two weeks after.

11:53:37 10 THE COURT: That's the first day that someone
11:53:39 11 could go in person at a board or complete and mail in your
11:53:49 12 ballot, your absentee ballot.

11:53:52 13 MR. MILLER: Yes, Your Honor. I believe
11:53:53 14 that's also the day that the absentee ballots will start
11:53:59 15 being mailed.

11:53:59 16 THE COURT: That's what I figured. So ballots
11:54:01 17 to be mailed --

11:54:04 18 MR. SCHUSTER: So with the ballots not being
11:54:07 19 mailed until October 6 for the mail-in purposes, you're not
11:54:10 20 going to be getting any in ballots, any actual ballots
11:54:14 21 because it's going to have to be sent and mailed to the
11:54:17 22 individual voter, and then the individual voter would have
11:54:19 23 to turn around and then mail it back to the board of
11:54:23 24 elections. That's all assuming that they have requested an
11:54:28 25 absentee ballot and it starts with the ballot being mailed

11:54:35 1 on October 6.

11:54:38 2 THE COURT: All right. Well, lots of people
11:54:40 3 will have because, again, every voter in the state received
11:54:44 4 an application last week, so that's a month before. So
11:54:49 5 anyone --

11:54:52 6 MR. SCHUSTER: It assumes that they're going
11:54:55 7 to complete that because the Ohio Secretary of State has
11:54:58 8 actually suggested that the voters send it in no later than
11:55:03 9 October 27. And you can imagine sending in an absentee
11:55:07 10 ballot application on the 27th and the incredible tight
11:55:14 11 turnaround times that would be necessary to actually get the
11:55:16 12 ballot in.

11:55:17 13 What my point was is that even assuming that they have
11:55:21 14 requested an absentee ballot and it has been recognized by
11:55:27 15 the board of elections on October 6, the board of elections
11:55:31 16 will still need to send the ballot out to the individual and
11:55:34 17 then in turn, but for the availability and sufficiency of
11:55:39 18 drop boxes, the individual voter would then have to mail it.
11:55:43 19 And that takes time as well to get to the board of
11:55:46 20 elections. And it's -- it becomes much more of an issue the
11:55:50 21 closer you get in your election time.

11:55:52 22 THE COURT: Well, obviously. But no one has
11:55:54 23 to wait till October the 27th to mail their absentee ballot
11:56:03 24 application since they got them the first week in September.

11:56:06 25 MR. SCHUSTER: That's correct, Judge. But

11:56:08 1 there's a -- but, you know, it does indicate -- it makes
11:56:16 2 a -- the Secretary of State seems to make a suggestion that
11:56:20 3 if you do it by as late as the 27th, you should be okay,
11:56:25 4 which is concerning. And the statute also allows it as
11:56:30 5 well, but the reality of the situation, by relying on the
11:56:34 6 mail, it becomes a very tenuous situation.

11:56:39 7 MR. MILLER: Your Honor, this is Charles
11:56:40 8 Miller.

11:56:40 9 It's just ironic that we're typically facing
11:56:44 10 challenges saying that we don't allow people to put in
11:56:46 11 applications closer to the date of election, don't allow
11:56:50 12 people to vote in person closer to the date of election, and
11:56:53 13 now we're being told that we're having it too close.

11:56:59 14 MR. SCHUSTER: I'm not --

11:57:00 15 MR. MILLER: We're always getting pulled in
11:57:02 16 multiple directions.

11:57:03 17 MR. SCHUSTER: I'm not saying that.

11:57:18 18 THE COURT: All right. The point is no one
11:57:19 19 has to wait until October 27. They got their absentee
11:57:24 20 ballot form the first week of September, so -- all right.

11:57:31 21 So that will be the schedule. And obviously I'll be
11:57:38 22 monitoring what the Franklin County judge does and read his
11:57:48 23 ruling. And again, if he construes the statute the way the
11:57:52 24 plaintiffs are asking, then I think this case will become
11:57:59 25 moot unless the Secretary appeals, but I don't know why he'd

11:58:05 1 appeal. But we'll be monitoring that.

11:58:08 2 All right. I think that covers everything I needed to
11:58:13 3 say. Anything anyone from either side wants to add?

11:58:19 4 Again, I do want -- no later than noon on Thursday I
11:58:27 5 want the plaintiffs to file something in response to my
11:58:37 6 request that they confer -- that they agree that this is all
11:58:42 7 the relief they're going to ask. They're not going to then
11:58:45 8 turn around and sue individual boards if they get the
11:58:50 9 discretion they're seeking, saying the board acted
11:58:55 10 unconstitutionally for not using its discretion or they
11:58:59 11 unconstitutionally used their discretion to have only two
11:59:04 12 lockboxes and they should have had five or six or whatever.
11:59:10 13 So I want a filing by noon, Thursday the 10th.

11:59:20 14 MR. GREENBAUM: Understood, Your Honor.

11:59:21 15 Jon Greenbaum.

11:59:22 16 MR. MILLER: Your Honor, Charles Miller.

11:59:24 17 You asked if we had any other concerns or issues.
11:59:29 18 Will we anticipate maybe late next week receiving
11:59:32 19 instructions on, you know, handling of exhibits and things
11:59:35 20 of that nature with respect to the Zoom trial? I'm familiar
11:59:38 21 with the Sixth Circuit, how that works, but not Zoom trials
11:59:42 22 or hearings.

11:59:42 23 THE COURT: Well, that's a good point. This
11:59:44 24 is actually my first Zoom hearing like this.

11:59:55 25 Yeah, I think everyone should exchange exhibits. I

12:00:00 1 mean, I don't think we're going to -- I don't know what
12:00:02 2 other exhibits we're going to have. We have -- you know,
12:00:05 3 there may be some plaintiffs have attached exhibits,
12:00:10 4 declarations, whatever. The State may have some in its
12:00:13 5 filing. But I agree, we should have those exchanged and
12:00:18 6 copies to the Court.

12:00:22 7 MR. MILLER: Your Honor, I'm -- again, this is
12:00:26 8 Charles Miller.

12:00:26 9 I'm curious if the Court will have some sort of
12:00:30 10 mechanism, you know, so that one of the Zoom screens would
12:00:33 11 be the exhibits or, you know, how that might be done, just
12:00:36 12 so we know that people are looking at the same thing.

12:00:39 13 THE COURT: I'll get some directives on that,
12:00:40 14 how we're going to handle exhibits. I'll have my staff get
12:00:51 15 me directives on that.

12:00:53 16 MR. MILLER: Thank you, Your Honor.

12:00:53 17 THE COURT: So that the witness, for example,
12:00:55 18 if you're showing the witness an exhibit, how the witness
12:00:57 19 sees it.

12:01:00 20 MR. MILLER: Yes, Your Honor.

12:01:03 21 THE COURT: All right. We'll get some
12:01:04 22 directives out in the next few days. But I want any
12:01:09 23 exhibits -- it seems to me they should be exchanged no later
12:01:16 24 than noon on Monday, the 21st, with copies to the Court.
12:01:22 25 That's the deadline for petitioner's reply, so obviously

12:01:26 1 you'll know any exhibits and the State should know by then.

12:01:32 2 So how does that sound?

12:01:33 3 MR. MILLER: Your Honor, Charles Miller.

12:01:34 4 That works for the defendant.

12:01:35 5 MR. GREENBAUM: That's okay with the
12:01:37 6 plaintiffs, Your Honor.

12:01:38 7 Jon Greenbaum.

12:01:40 8 THE COURT: So 9/21 with copies to the Court.

12:01:45 9 So just mail them to the Court, all right, and they will
12:01:47 10 have them.

12:01:52 11 Okay. All right. Anything else?

12:01:59 12 That was a good point. We'll get directives out on
12:02:02 13 that. And obviously we'll get -- everyone will have the
12:02:05 14 Zoom site.

12:02:06 15 And I think this is how we'll do it. Make sure all
12:02:13 16 your witnesses have the Zoom site, and then we'll only have
12:02:18 17 one witness at a time. So witness number one, you know,
12:02:22 18 would be on there right at the beginning, and then
12:02:25 19 plaintiffs are going first, so you just -- as soon as
12:02:28 20 witness number one is done, we just e-mail witness number
12:02:31 21 two to call in, Zoom in. And I'll leave it to each lawyer
12:02:38 22 to do that because you'll have the order of your witnesses.
12:02:41 23 And then when we finish the plaintiffs, then we'll go to the
12:02:47 24 defendant's witnesses. So we only have one witness -- only
12:02:52 25 one witness testifies at a time.

12:02:54 1 And we'll have each lawyer just -- we'll get the links
12:02:57 2 out to people in advance so they'll be prepared, and then
12:03:00 3 you'll just -- you'll notify them as soon as witness one is
12:03:05 4 done, witness two calls in, et cetera. That should work.

12:03:10 5 MR. MILLER: All right, Your Honor. This is
12:03:12 6 Charles Miller.

12:03:12 7 I think that will work. And there is the ability to
12:03:16 8 hold people in the waiting room until you want them.

12:03:19 9 THE COURT: All right. We can also do that.

12:03:20 10 Okay. I think what we'll do is this. I'm not going
12:03:33 11 to schedule another phone call, but if -- when we get a
12:03:38 12 ruling from the state court, if I need a quick phone call,
12:03:43 13 I'll schedule it. And I like to make sure, because we've
12:03:47 14 got a compressed time schedule, that everyone monitors their
12:03:52 15 e-mails over the weekend in case there was communication
12:03:57 16 from the Court, you know, over the weekend, which there
12:04:00 17 could be.

12:04:01 18 I don't know when the judge will make his ruling. He
12:04:05 19 may make it -- again, has the judge indicated if he's going
12:04:08 20 to rule from the bench on Friday, given any indication?

12:04:11 21 MR. MILLER: Your Honor, this is Charles
12:04:12 22 Miller.

12:04:13 23 He has not given that indication yet, but I am like
12:04:21 24 you, I anticipate that he will. In addition to that, as
12:04:25 25 soon as we get that order from him or ruling and it's

12:04:30 1 relayed to me, I will send it to everyone on the e-mail
12:04:32 2 chain here.

12:04:34 3 THE COURT: All right. That's good. Thank
12:04:35 4 you, Charles.

12:04:39 5 All right. Well, that -- depending on what the ruling
12:04:42 6 is, I may want to have a phone conference so we know exactly
12:04:48 7 what we're going to be -- maybe we won't need to litigate
12:04:54 8 anything. That would be the nice thing. If he just says
12:04:57 9 the statute doesn't prohibit multiple lockboxes, that should
12:05:00 10 end it. We won't have to do much of anything. But if it
12:05:06 11 goes the other way, we'll (indiscernible audio). So if we
12:05:10 12 need another phone call, I'll have it.

12:05:13 13 Okay. Thanks everyone. Stay safe.

12:05:15 14 (Proceedings adjourned at 12:05 p.m.)

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16 **C E R T I F I C A T E**

17

18 I certify that the foregoing is a correct transcript
19 of the record of proceedings in the above-entitled matter
20 prepared from my stenotype notes.

21

22 /s/ Lance A. Boardman 09-15-2020
23 Lance A. Boardman, RDR, CRR DATE

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